

HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

MARK LANE, individually,  Plaintiff,  vs.  THE KROGER CO., a foreign corporation, registered and doing business in Washington as FRED MEYER STORE #25; and FRED MEYER STORES, INC., a foreign corporation, registered and doing business in Washington as FRED MEYER STORE #25;  Defendants.	NO. 2:18-cv-00483-RSM   <b>PLAINTIFF'S PRETRIAL STATEMENT PURSUANT TO LCR 16(h)</b>   Honorable Ricardo S. Martinez
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Plaintiff submits the following pretrial statement pursuant to LCR 16(h), and reserve the right to supplement and/or amend all information contained below depending on the Court's anticipated ruling on Defendants' pending Motion for Summary Judgment.

**I. Basis of Federal Jurisdiction**

Diversity jurisdiction is vested in the Court pursuant to 28 U.S.C. § 1332(a) and 1441 (b), as well as 28 U.S.C. § 1367, conferring supplemental jurisdiction on Plaintiff's related state law claims.

**PLAINTIFF'S PRETRIAL STATEMENT  
PURSUANT TO LCR 16(h) - Page 1**

**COPPINGER  CARTER P.S.**

ATTORNEYS AT LAW

100 Central Avenue, Bellingham, WA 98225	address
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360.676.7545	phone
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## II. Claims for Relief

Plaintiff will pursue at trial the following claims, or the claims below that remain following the Court's ruling on Defendants' Motion for Summary Judgment, as such Plaintiff reserves the right to file an amended Pretrial Statement following the Court's ruling:

- Disability Discrimination and Failure to Accommodate in violation of RCW 49.60 et seq. - Washington Law Against Discrimination;
- Retaliation in violation of RCW 49.60 et seq., Washington Law Against Discrimination for Plaintiff opposing Defendant's failure to accommodate.
- Constructive discharge in violation of Public Policy due to failure to accommodate resulting in Plaintiff leaving work ill, and in the alternative, Wrongful Discharge for Defendant's decision to determine such departure as a voluntary quit; and

## III. Undisputed Facts

The following facts are undisputed by the parties:

- Plaintiff was a Customer Service Cashier at Fred Meyer Store No. 25, in Bellingham, Washington until his employment was terminated April 5, 2015.
- Plaintiff began employment for Fred Meyer Store No. 25 in June 1997.
- During Plaintiff's employment in 2011, Plaintiff had medical conditions arise resulting in a need for accommodation.
- Between 2011 and 2014, Defendants made various accommodations for Plaintiff to varying and inconsistent degrees.

- On or about March 4, 2014 Plaintiff met with Defendants' Human Resources department to review and discuss his accommodations.

#### IV. Issues of Law

The following are issues of law to be determined by the Court:

- 1) Did Defendant fail to reasonably and properly accommodate Plaintiffs' disability?
- 2) Did Defendant retaliate against Plaintiff for his complaints that he was not being accommodating resulting in increased illness?
- 3) Was Plaintiff constructively discharged on his final day of work when he became ill after not being accommodated and had to leave work?
- 4) In the alternative, did Defendant's wrongfully discharge Plaintiff following his complaints and illness following a lack of accommodation?

#### V. Plaintiff's Witnesses

Plaintiff plans to present the testimony of the following witnesses:

Witness	TESTIMONY	TESTIFY (Yes/Possible)
Mark Lane c/o Coppinger Carter, P.S. 100 Central Avenue Bellingham, WA 98225 360-676-7545	Plaintiff: Has information regarding employment, claims made herein and resulting damages.	Yes
Milan Benjamin, MD Associates in Family Medicine 3130 Ellis Street, Bellingham, WA 98225	Plaintiff's primary care physician since approximately December 1998. He has information regarding the reasonableness and	Possible

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Witness	TESTIMONY	TESTIFY (Yes/Possible)
	necessity of Plaintiff's employment accommodations.	
Maren Moody Human Resources Employee c/o Fred Meyer c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. Moody may have information regarding modifying Plaintiff's position in 2011.	Possible
Cindy Thurman Central Cashiering Department Manager c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. Thurman may have information regarding Plaintiff's position as a Self-Checkout Attendant.	Possible
Karla Booker Human Resources Manager c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. Booker may have information regarding Plaintiff's requested accommodations.	Possible
Darlene McCullough Assistant Customer Service Manager c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. McCullough may have information regarding Plaintiff's demeanor and activities prior the subject termination	Possible
Kevin Rouff Human Resources Manager c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Mr. Rouff may have information regarding Plaintiff's requested accommodations.	Possible
Angelito Domingo Front End Supervisor c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Mr. Domingo may have information regarding Plaintiff's demeanor and activities prior to the subject termination	Possible
Nicole Lewis Person in Charge c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. Lewis may have information regarding Plaintiff's demeanor and activities prior to the subject termination	Possible

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Witness	TESTIMONY	TESTIFY (Yes/Possible)
Bill Cassels Store Manager c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Mr. Cassels may have information regarding Plaintiff's demeanor and activities prior to the subject termination	Possible
Madison Vondracheck c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	Ms. Vondracheck may have information regarding Plaintiff's demeanor and activities prior to the subject termination and on the day of the termination	Possible
Josh Harris Front End Supervisor c/o Fred Meyer 800 Lakeway Drive Bellingham, WA 98229	May have information regarding the conversation I had with Darlene McCullough on April 4, 2015 prior to going home due to being ill.	Possible
Bill Roberts UFCW Local 21 Union Representative 5030 First Avenue S., Suite #200 Seattle, WA 98134	May have information regarding his investigation during the grievance process and his findings regarding same.	Possible
Lisa Oakland UFCW Local 21 Union Representative 5030 First Avenue S., Suite #200 Seattle, WA 98134	May have information regarding the grievance process and the negotiations with Fred Meyer regarding Plaintiff's request to return to work.	Possible
Doug and Deann Lane Parents 2631 Taylor Avenue Longview, WA 98632	May have information regarding aspects of Plaintiff's termination, job search efforts and lawsuit	Possible

## VI. Exhibits.

### EXHIBIT INDEX

EXHIBIT NO.	DOCUMENT / EXHIBIT DESCRIPTION / IDENTIFICATION	PLAINTIFF BATES NO.
<b>TAX RETURNS</b>		
1	Mark Lane Tax Returns (2012-2018)	PL LANE 20-33; 284-285; 420-427

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LETTERS, REPORTS AND STATEMENTS REGARDING CHARGE / TERMINATION / INVESTIGATION		
2	Client letters for Human Resources and General Manager	PL LANE 1-15
3	Email from Bill Cassels, dated 4/2/15	PL LANE 37-42
4	Timeline of Events of 4/2/15	PL LANE 43
5	Statement of Madison Vondracheck, dated 4/16/15	PL LANE 36, 434
6	Email Correspondence to UFCW Local 21 Union	PL LANE 50-52
7	Unemployment file	PL LANE 55-152
8	Mark Lane handwritten statements	PL LANE 53-54
MEDICAL PROVIDER LETTERS		
9	Letter from Milan Benjamin, MD	PL LANE 34
10	Letter from Karen Aronoff, Psy,D	PL LANE 35
11		

DATED this 29th day of April, 2019.

COPPINGER CARTER P.S.

By: /s/ Carrie Coppinger Carter

Carrie Coppinger Carter, WSBA #28817  
Attorney for Plaintiff  
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2019, I have caused the foregoing pleading to be electronically filed using the CM/ECF system, which will send notification of such filing to the following parties/attorneys:

Susan K. Stahlfeld, WSBA No. 22003 Katie Loberstein, WSBA No. 51091 Miller Nash Graham & Dunn, LLP Pier 70 2801 Alaskan Way, Suite 300 Seattle, WA 98121 Phone: (206) 624-8300 Fax: (206) 340-9599 Email: <a href="mailto:susan.stahlfeld@millernash.com">susan.stahlfeld@millernash.com</a> <a href="mailto:katie.loberstein@millernash.com">katie.loberstein@millernash.com</a> <a href="mailto:gayle.johnson@millernash.com">gayle.johnson@millernash.com</a>	
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